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EXAMINER

JACKSON, BRANDON LEE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

This Office Action is in response to amendments/arguments filed 8/2/2010. Currently, claims 1-15, 18-34, 43-57 are pending, claims 3-5, 10-15, 21-31, 46-47, 51-55 have been withdrawn from consideration, claims 16-17, 35-42 and 58-64 have been cancelled in the instant application.

Response to Arguments

Applicant's arguments with respect to claims 1-2, 6-9, 19-20, 32-34, 43-45, 48-50, 56-57 and 65-70 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 6-7, 19-20, 32-34, 43-45, 49, 56-57, 65-67 and 69-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jablonka et al. *U.S. Patent 7,361,154* in view of Anand et al. *U.S. Patent 7,207,962*.

With respect to claims 1, 32, 65-66 and 70, Jablonka discloses a vibration dampening device (10) comprising a patch (18) having nominal length, width and defining an outer periphery (fig. 1a); a body contacting surface (fig. 5); and a step member (12) engaged to the patch (18) that contacts the user's forearm (fig. 5). The distal end of the step member (12) extends beyond the outer periphery of the patch (18) and has the freedom to move with respect to the patch. Jablonka discloses the step member (12) is flexible and elastic (col. 3, lines 37-40); however, Jablonka fails to disclose the material of the step member and that it has an elongation of at least 100%. However, Anand discloses a compression fabric with elongation properties of at least 200% (col. 5, lines 18-21) and adhesive for securing the fabric to the user (col. 11, lines 39-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Jablonka step member to be made of the stretch material, as taught by Anand, in order for the device to be adjustable to any size arm. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the Jablonka fastener for adhesive, as taught by Anand, as an alternative means of securing the device to the user.

With respect to claim 2, the step member (12) has two ends (fig. 1a) that extend beyond the periphery of the patch (18).

With respect to claims 6 and 7, the step member engages first and second slots (45, 46) by threading the ends of the step member (12) through the slots (45, 46).

With respect to claims 19 and 67, the patch (18) defines a central portion and the skin-contacting surface (fig. 5) at the central portion is constrained from movement by the step member (12) that overlaps the patch (18) when it is attached to the user (fig. 5).

With respect to claim 20, the step member (12) defines a central axis (fig. 1a) along its length, and further comprises an extension (16) appended to the distal end of the step member (12).

With respect to claims 33 and 34, Jablonka fails to disclose the viscoelastic material has a density in the range of 7 to 15 pounds per cubic foot, a tensile strength from 40 to 80 psi, and a compression deflection at 25% from 3 to 10 psi. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to for the viscoelastic material to have has a density in the range of 7 to 15 pounds per cubic foot, a tensile strength from 40 to 80 psi, and a compression deflection at 25% from 3 to 10 psi, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 43-45, 49 and 56-57, Jablonka/Anand teaches each element of the claimed invention; therefore, the method steps would have been obvious because it would have resulted from the use of the Jablonka/Anand device.

With respect to claim 69, the patch (18) is a rectangle (fig. 1a).

Allowable Subject Matter

Claims 8-9, 50 and 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record fails to fairly teach or suggest the step member slidably engaging the patch and a loop formed in the central portion of the step member.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Todd *U.S. Patent 6,790,520*.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

/BLJ/

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772